UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13

CHEF SOLUTIONS, INC.

Employer

and Case 13-RC-21322

UNITE HERE LOCAL 450

Petitioner

and

PRODUCTION AND MAINTENANCE UNION, LOCAL 101

Intervenor

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing on this petition was held on before a hearing officer of the National Labor Relations Board, herein referred to as the Board, to determine whether it is appropriate to conduct an election in light of the issues raised by the parties.[1]

I. Issues

The Petitioner, Unite Here Local 450, seeks to represent a production and maintenance bargaining unit at the Employer's facility located in Wheeling, Illinois. The Employer is engaged in the business of manufacturing prepared salads at its facility. The bargaining unit consists of approximately 120 employees. At the hearing, the parties agreed that should the petition be processed the bargaining unit should be the same as covered in the contested bargaining agreement.

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[1] Upon the entire record in this proceeding, the undersigned finds:

a. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
b. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
c. The labor organizations involved claim to represent certain employees of the Employer.
d. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

The Employer and the Intervenor contend they have a valid collective-bargaining agreement which serves as a contract bar to the instant petition. The Employer and the Intervenor have requested that the petition should be dismissed because of the contract bar rule.

The Petitioner argues there is no valid contract because the collective-bargaining agreement was not signed by all the parties prior to the filing of the petition and because it was not ratified by the union membership.

II. Decision

For the reasons discussed in detail below, I find that the Employer and the Intervenor have a valid collective-bargaining agreement which serves as a contract bar to the instant petition.

Accordingly, IT IS HEREBY ORDERED that the petition in the above matter be, and it hereby is, dismissed.

III. Facts and Analysis

In order for contract to serve as a bar to an election, the Board's well-established contract bar rules require that such an agreement satisfy certain formal and substantive requirements. The seminal case clarifying these requirements, *Appalachian Shale Products*, 121 NLRB 1160 (1958), holds that an agreement must be signed by the parties prior to the filing of the petition that it would bar and it must contain substantial terms and conditions of employment sufficient to stabilize the parties' bargaining relationship.[2] The agreement, however, need not be embodied in a formal document. An informal document or documents, such as written proposed and a written acceptance, which nonetheless contains substantial terms and conditions of employment, are sufficient, if signed. *Holiday Inn of Ft. Pierce*, 225 NLRB 1092 (1976); *Seton Medical Center*, 317 NLRB 87 (1995)(citing *Appalachian Shale, supra. and Georgia Purchasing*, 230 NLRB 1174 (1977)).

The evidence shows that the Employer and the Intervenor had a collective-bargaining agreement that expired on February 16, 2005. The Employer and the Intervenor negotiated for a new collective-bargaining agreement starting about January 13, 2005. However, the Employer and Intervenor did not reach an agreement by the February 16th, so the parties executed a series

[2] The Petitioner cites *Herlin Press, Inc.*, 177 NLRB 940 (1969) for the proposition that a collective bargaining agreement must be signed by all the parties in order to serve as a contract bar. However, the facts in this case fall squarely within the exception anticipated by the Board in *Appalachian Shale* where the parties reach an agreement as a result of an exchange of a written proposal and a written acceptance, both of which are signed. 121 NLRB. at 1162. Moreover, the facts of *Herlin Press* where the parties agreement automatically renewed from year to year, with a provision to arbitrate terms of a successor contract, and the petition was filed in the window period of the extended agreement, are distinguishable from the instant case.

of written extensions which continued the contact until March 31, 2005.[3] During this time, the Employer and the Intervenor were actively negotiating a new contract. On March 6, 2005, the Interventor presented the bargaining unit employees with the Employer's contract offer. The employees failed to ratify the contract. As a result, the parties returned to the bargaining table and the Employer agreed to make changes to the terms of its offer. On March 13, 2005, the Intervenor presented the Employer's amended offer to the employees for a ratification vote. The employees failed to ratify the contract. The Union called a strike vote for March 19, 2005. A notice regarding the strike vote was posted on the Union's bulletin board at the Employer's facility. On March 19, 2005, the employees failed to authorize a strike, by the required two-thirds majority of eligible voters,thus, the Petitioner would have to accept the contract. That same day, the Intervenor's Vice-President Louis Burton, notified the Employer's representative, Bryan Glancy, by telephone that the strike vote had failed, so the Intervenor would sign the contract.

On March 22, 2005, the Intervenor sent a letter to the Employer's representative confirming that the employees had failed to authorize a strike and that as a result the collective-bargaining agreement negotiated between the parties was ratified.[4] On March 23, 2005, Bryan Glancy signed the final draft of the collective-bargaining agreement. Glancy signed the contract first because he was scheduled to leave the country on March 24, 2005. The instant petition was filed on March 28, 2005. On March 29, 2005, the Union representatives, Ricardo Castaneda and Louis Burton, went to the Employer's facility to sign the contract. At this time, two more company representatives, Mary Beth Janak and Scott Freitig, also signed the contract.

Under these circumstances, I find the Employer and the Intervenor have a valid collective-bargaining agreement which acts as a contract bar to the instant petition. By its letter dated March 22, 2005, the Union clearly accepted the Employer's last contract offer. As a result of the Union's acceptance of the Employer's final offer, the Employer's representative, Glancy, executed a final draft of the contract on March 23, 2005, which memorialized the substantial terms and conditions of employment agreed upon by the parties during bargaining. Therefore, I conclude that by March 23, 2005, the parties had a comprehensive contract in effect.

The failure of the Union representatives to actually sign the final draft of the collective-bargaining agreement until March 29, 2005, is immaterial. As already noted, there is no requirement that the parties' signatures be affixed to one single formal document to establish a valid contract. *Appalachian Shale*, supra. *Liberty House*, 225 NLRB 869 (1976). Because the collective-bargaining agreement signed by the Employer on March 23, 2005, adequately

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[3] Although not litigated by the parties, an extension to a collective-bargaining agreement does not act as a contract bar. *Crompton Company, Inc.*, 260 NLRB 417 (1982).

[4] In its brief, Petitioner implies that the March 22nd letter was first sent to the Employer on March 28, 2005. However, the record is clear that the March 22, 2005 letter was sent to Byran Glancy on March 22, 2005, and then again to Human Resources Manager Mary Beth Janak on March 28, 2005, in response to concerns that employees were not signing up for the bargained for health insurance. Subsequently, the March 22, 2005 letter was posted at the Employer's facility on March 28, 2005.

identifies the contract terms which were accepted by the Union in its signed March 22, 2005, letter, the documents together form a contract that bars the petition.

The Petitioner also asserts that the agreement does not bar the petition because the Intervenor did not follow its own constitutionsl ratification provisions. But ratification is not required to form a bar to a petition unless the contract itself expressly provides that ratification is a condition precedent. By contrast, where as here, "the question of prior ratification depends upon an interpretation of…a Union's constitution or bylaws…the contract will constitute a bar." Appalachian Shale 121 NLRB at 1162-1163. Since no provision requiring ratification appears in the contract, the purported failure of the Intervenor to follow its own rules is immaterial. Accordingly, I find that the Employer and Intervenor had a valid contract as of March 23, 2005, which constitutes a bar to the petition; therefore, I order that the petition be dismissed.

IV. Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street NW, Washington, DC 20005-3419. This request must be received by the Board in Washington by **.**

DATED at Chicago, Illinois this 22nd day of April 2005.

/s/ Roberto G. Chavarry
Regional Director
National Labor Relations Board
Region 13
200 West Adams Street, Suite 800
Chicago, Illinois 60606

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